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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re CAROLYN S. et al., Persons
Coming Under the Juvenile Court Law.**

**CONTRA COSTA COUNTY
BUREAU OF CHILDREN AND
FAMILY SERVICES,**

Plaintiff and Respondent,

v.

DONALD S.,

Defendant and Appellant.

A105078

**(Contra Costa County
Super. Ct. No. J03-01705)**

Donald S. (Father) appeals from a dispositional order removing his children, Carolyn S. and Edward (Eddie) S., from his custody and approving their placement with a former stepmother, Brenda S. (Welf. & Inst. Code,¹ § 395.) Father challenges the placement of the children in the custody of Brenda S. He also contends the court's visitation order was unlawful and asserts the court abused its discretion in not transferring the case to Solano County. Lastly, he also contends he received ineffective assistance from his trial counsel. We reject these contentions and affirm.

¹ All undesignated section references are to the Welfare and Institutions Code.

BACKGROUND

Dependents Carolyn and Eddie (collectively the children) were badly burned in a house fire in 1993, while in the care of their mother, Melissa A. At the time of the fire, Carolyn was age 2 and Eddie was age 7 months. The children were later placed in the care of Father and his then wife, Brenda S., who took care of them for several years. Father and Brenda S. subsequently divorced, resulting in the children being placed in Father's custody in 2001 by the Solano County Juvenile Court.²

On September 13, 2003, the Martinez police were dispatched to the home of Gwen Brooks, the mother of Nicole Brooks (Nicole), who was Father's girlfriend at that time. Father left the children overnight in the care of Nicole, who later physically abused them. According to Carolyn, Nicole had hit Carolyn on the arms and squeezed Eddie around his chest, causing pain. Upon Father's return, Nicole went out to Father's car and the two of them drove off together, throwing the children's clothes from the car as they drove away. Nicole's mother called the police and the Contra Costa County Bureau of Children and Family Services (CFS) was notified. The children did not know where Father could be located. Carolyn was afraid of Father and afraid for Eddie. Carolyn said that she had seen Father threaten Nicole with a gun.

Petition Allegations

On September 16, 2003, CFS filed juvenile dependency petitions asserting willful or negligent failure of Father to care for the children, as well as inability of Father to provide regular care for the children due to mental illness, developmental disability, or substance abuse. (§ 300, subd. (b).) The petitions alleged Father had an extensive history of substance abuse that inhibited his ability to provide adequate care for the children. The petitions also alleged that Father had failed to adequately protect the children from acts of cruelty perpetrated by Nicole. (§ 300, subd. (i).)

² That court precluded Brenda S. from caring for Eddie. On appeal, our court vacated that order because "no evidence" supported it. (*In re Edward S.* (Jan 12, 1998, A073536 & A077966); see discussion [*Disposition Report*], *infra*, at pp. 7-8.)

At a September 17, 2003 hearing, the juvenile court determined that the children should be detained and not released to Father's custody because of substantial danger to their physical or emotional health. On October 10, CFS filed amended petitions that further asserted Father had not provided the children with adequate medical care for their burn scars that require frequent skin grafting and other treatments. The amended petitions alleged Father frequently left the children for days at a time with a cruel caretaker, without adequate supervision. The amended petition concerning Carolyn alleged that on September 13 Nicole hit Carolyn on the arm causing a bruise. The amended petition concerning Eddie alleged that on September 13, 2003, Nicole squeezed Eddie's abdomen causing pain to the child.

Jurisdictional Hearing

Contested jurisdictional hearings were held on November 3 and December 1, 2003, at which CFS presented evidence through in-court testimony and through a jurisdictional report prepared in advance of the hearing. Carolyn testified that Father and Brenda S. split up in 2001. Following the breakup, Carolyn and Eddie lived with Father. For about a year they lived at a residence located in Vallejo and then began living in motels. Nicole moved in with them "probably a year ago" and sometimes yelled and hit the children.

Carolyn described the events leading up to her removal from Father's custody. Father, Nicole, Carolyn and Eddie were visiting over a weekend at the house of Nicole's mother. At some point, Father had left the house. Nicole drank some vodka and later punched Carolyn, bruising her arm. Nicole became angry with Eddie, picked him up and "squeezed him real tight around his stomach." Eddie screamed and looked like he was in pain. Nicole released him.

Nicole had hit Carolyn in the head on other occasions. When Carolyn would tell Father that Nicole had hit her, he would tell Carolyn to "ignore her" and would not do anything about it. Carolyn told Father "basically every time" Nicole hit her. Nicole also would spank Eddie if he did anything wrong or "was just being a little brat like brothers

are.” Nicole also would pinch him on his arm. Eddie has burn scars throughout his arm from the 1993 fire.

Carolyn testified she saw Father drink large quantities of alcoholic beverages every day, and that she had seen Father and Nicole smoke marijuana. Carolyn also saw Father use needles on himself. Nicole threatened to get Carolyn “in big trouble” and beat her up if Carolyn told anyone about the marijuana.

Carolyn was examined by a Dr. Kaplan sometime before she left for a camp for burn survivors in June 2003. Eddie went to the camp with her. Sometime before September 2003, they all stayed in Reno for about three weeks. Father decided they should all move to Idaho, but before leaving for Idaho, they visited Nicole’s mother to say goodbye.

Carolyn testified that Eddie had not gone to school during the previous 12 to 18 months and was not being taught at home by Father or Nicole. Eddie cannot read and can only write his name. Eddie testified that it hurt when Nicole picked him up.

Father testified that Dr. Kaplan is the primary physician for the children, and that Father took the children to see Dr. Kaplan in preparation for their going to camp. Father had a “drunk driving” offense in 1995 and attended an outpatient chemical dependency class in about 1997. He acknowledged drinking alcoholic beverages over the last year but estimated the amount at “probably a six-pack a week.” He denied smoking any marijuana or ever having shot drugs into his arm. It is possible he rolled a marijuana cigarette in front of Carolyn because his girlfriend “smoked a little weed once in a while.” Any hypodermic needles Carolyn may have seen in the motels where he stayed with the children had been present in the motel rooms before Father and the children began using the motel rooms.

Father was “doing a brake job on a car” at a friend’s house on the day Nicole hit Carolyn on the arm. Father was never present when Nicole physically disciplined the children, other than one time when she gave Eddie “a slight smack on the butt because he was throwing a fit.” Eddie’s “genital area and his butt” are the only areas on which he does not have burn scars.

On one occasion, Carolyn told Father that Nicole had hit her out of Father's presence. Father said he would talk to Nicole about the matter and did so. Eddie never told Father that Nicole had hit him when Father was not present.

Father last enrolled Eddie in school for the first couple of weeks of the September 2002 school year. The teacher had told Father she could not handle Eddie, so Father kept him home. Father spoke with school district officials about a different placement for Eddie, but "the district wanted to place him in a low-functioning class" that Father thought inappropriate for Eddie. Father was looking into a school placement to begin in September 2003, but then decided to move out of California. Father was going to look into schooling for Eddie in Nevada.

Father expressed concern that if the children lived with his Brenda S., she would "poison [the] children against [him]—just with words" as she had done at the time of their divorce. Father testified that she had previously been diagnosed with Munchausen's Syndrome by Proxy, and with severe anxiety. Father was afraid her psychological disorders would have a detrimental effect on his ability to reunite with his children and that the reports to social services personnel would be influenced by her.

On cross-examination, Father acknowledged that the children needed surgeries sporadically and that the last time he took them to see their surgeon (Dr. Greenhalgh) was in October 2001. Given the extensive burns on Eddie's body, he was going to require many more surgeries as his body grew. Eddie had his most recent surgery at that time. Father acknowledged that he was supposed to take Eddie for follow-up appointments approximately every three to six months. The interval since October 2001 was the longest period of time Eddie had gone without having follow-up surgery [to release his scar tissue]. Eddie's only visits to Dr. Kaplan since October 2001 were the checkups needed before Eddie went to summer camp each year.

Father agreed that Eddie was having difficulty walking because of tightness in his ankle and knee. He acknowledged that when Dr. Greenhalgh examined Eddie this year, the doctor was worried about Eddie's ulcerated knee and the tightness in Eddie's foot.

Father participated in the outpatient chemical dependency class in about 1997 in order to alleviate the court's concerns about a "DUI" he had sustained in 1989. Father did not think he had drunk to excess in the last couple of years.

Father did not attend a September 17, 2003 detention hearing concerning the children because the hearing was postponed until the afternoon, he was not feeling well, and he "passed out" in the law library. Not long before, he had left a hospital in Reno without being discharged by the hospital staff where he was being treated for diverticulitis.

Father began dating Nicole in about May 2002. Father, Nicole and the children were only moving from motel to motel for the period of a couple of weeks before they all left for Reno. He broke up with Nicole at the time of the September 13, 2003 incident.

Father was married to Brenda S. for about seven years. In 1998, he gave written temporary custody of the children to Brenda S. while he received treatment for his chemical dependency problem. By the time he gave Brenda S. temporary custody of the children, he had been married to her for five years and was already aware of the issues concerning her psychological disorders. He separated from Brenda S. in 2000.

The defense submitted in evidence a letter from Dr. Kaplan indicating that he examined the children on April 30, 2003.

At the conclusion of the jurisdictional hearing, the court determined Carolyn's testimony had been credible and found the petitions, as amended, to be true for each child in nearly all respects. With regard to both children, among other findings, the court found Father's history of substance abuse and his current substance abuse problem inhibited his ability to provide adequate care for the children; Father had failed to ensure adequate skin grafting and medical supervision and treatment of both children for at least the previous year; Father had frequently left both children in the care of a cruel caretaker; during the September 13, 2003 incident, Nicole had hit Carolyn on the arm causing a bruise, and had squeezed Eddie's abdomen causing him pain; Father failed to protect Eddie from acts of cruelty by Nicole who frequently hit him on his burn scars causing extreme pain to his scar tissue, and that the September 13 incident had led the police to

bring Eddie to the hospital due to the severe stomach pain caused by squeezing his stomach; and Father had neglected Eddie's educational needs by failing to ensure his attendance at school for the previous 18-month period.³

Disposition Report

A disposition report was prepared and filed with the court. The disposition report noted that in 1995, after Eddie had been released into Father's care, Solano County initiated dependency proceedings based upon concerns that Brenda S. had been diagnosed with Munchausen's Syndrome by Proxy. However, a written assessment by the Solano County Department of Social Services of Brenda S.'s condition concluded, as follows: "the assessment . . . does not conclude she would deliberately harm [Eddie] or cause him to be ill; in fact, the report specifies she would not do so. The concern is that she might distort or misrepresent the minor's condition/progress to medical providers to the extent it would impact negatively upon his medical care. The department believes this concern can be addressed by having professional staff from the agencies involved see [Eddie] several times a week so that the professional assessment could counter any misrepresentation which might occur." (Italics omitted.)

The Solano County Department of Social Services recommended that Eddie be placed in his Father's custody. Eddie was placed in the care of Father and Brenda S.; however, the Solano County Juvenile Court ordered Brenda S. not to care for or have unsupervised time with Eddie. The latter order was reversed on appeal in an unpublished decision by this appellate court (A073536 & A077966), based on the conclusion that the order would prevent Brenda S. from continuing normal parental care activities such as bathing, dressing, or feeding the minor even when her husband was present. The appellate court ruled, "In the face of the evidence that the minor has received excellent care in the home of Donald and Brenda S., with no problems in the past few years, such an order appears without evidentiary support." (Italics omitted.)

³ The court dismissed allegations in Carolyn's petition asserting that Father had neglected her educational needs, and had failed to protect her from frequent attacks by Nicole.

The disposition report indicated that Eddie and Carolyn continued to receive adequate medical care up until late 2001, by which time Father had separated from Brenda S. and had begun dating Nicole. The disposition report recounted Father's failure to work out an adequate school placement for Eddie with school officials causing Eddie to remain out of school for the entire 2002 academic year. It also indicated Father's refusal to speak with the social worker or respond to written correspondence since the first jurisdictional hearing, and his denial of a substance abuse problem.

Dispositional Hearing

A contested dispositional hearing was held on December 19, 2003. At the hearing, the court noted it had read and considered the disposition report and that the whereabouts of the children's mother, Melissa A. remained unknown. Social worker Marcy Williamson testified that Father had not begun any of the programs or pursued the referrals sent to him since September.

Father testified that he had read the case plan recommendations and was willing to do "whatever it takes," including counseling and parenting classes, random testing, and outpatient substance abuse treatment. Father was living as a roommate in a three-bedroom house in Vallejo with another divorced dad and his two children. Father was concerned about placement of Carolyn and Eddie with Brenda S. based on his prior experiences with her "over-exaggerating everything" and being "a crisis junky." Father was concerned about the influence Brenda S. might have on his relationship with the children. Father believed the reports that Nicole abused his children, and had no intention of renewing any relationship with her.

Following the completion of testimony and comments from counsel, the court ordered family reunification services for Father and placement of the children with Brenda S. The court noted it was "not that enthusiastic about Brenda as the caretaker" and did not "doubt that there's some alienation [from Father] going on here." However, the court noted it also had listened to the position of the minors' attorney, who informed the court that the children "loved" and were "really happy" with Brenda S. The court concluded it did not have any other alternative placement right now.

The Solano custody order (dated August 26, 1998) was entered following remand from this appellate court; it provides physical and legal custody of Eddie to Father, and directs Father “to provide all health care for the minor.” The Solano custody order does not mention Brenda S. and includes no directives whatsoever concerning her. We recognize, of course, that by providing Father sole authority over Eddie’s health care, the Solano custody order impliedly precludes all other persons (including Brenda S.) from exercising such authority.

Although the juvenile court in the proceedings below may not have been provided with the Solano custody order itself, the juvenile court clearly was apprised by the December 15, 2003 disposition report that Brenda S. “had been diagnosed with Munchausen’s Syndrome by Proxy” and was aware that Father held sole custody over the children at the time the current petitions were filed. The disposition report also conveyed the understanding that neither the proceedings in Solano County Juvenile Court, nor the prior appellate decision by this court, authorized Brenda S. to make health care decisions on behalf of Eddie. The juvenile court’s placement order is consistent with our appellate decision discussing Brenda S. and with the Solano custody order entered on remand from our decision, because the placement order requires CFS, not Brenda S., to authorize all medical treatments for the children. We reject Father’s contention that the current placement order is inconsistent with the Solano custody order; the current order continues to deny Brenda S. authority over the children’s health care decisions.

Father asserts that placing the children with Brenda S. was an abuse of discretion because it effectively denied him adequate reunification services. He points out that under section 361.3, subdivision (a)(7)(E), a caretaker should be able to facilitate reunification efforts with a parent.⁵ He cites the hostility Brenda S. held toward him as indicative that she would hamper, rather than facilitate, his reunification efforts with the

⁵ Under subdivision (a)(7)(E) of section 361.3, one of the many factors that the county social worker and the court “shall consider” in deciding whether placement with a relative is appropriate is the ability of the relative to “Facilitate court-ordered reunification efforts with the parents.”

children. He claims the court “expressly found that Brenda [S.] was hostile to [Father] and was alienating the children from him. [The court] found that Brenda would not help with reunification.” He adds that “placing these children in a home where it is known that they will be exposed to alienating behavior is child abuse.”

Father’s characterization of the record is incorrect in several key respects. The record contains no actual evidence of any actions by Brenda S. to alienate the children from Father. Father testified at the jurisdictional hearing that he was “concerned that she’s doing the same thing that happened at the divorce: she’ll poison my children against me—just with words.” Father was “afraid” her psychological disorders would have a detrimental effect on his ability to reunite with the children and that the reports to social services would be influenced by her. At the dispositional hearing, Father stated that changes in Carolyn’s statements to the social worker and in Carolyn’s testimony led him to believe that she was being influenced by Brenda S. However, no facts were ever mentioned and no other evidence of alienating behavior was ever presented.

Furthermore, contrary to Father’s assertion, the court never made any express finding that Brenda S. was hostile to Father or was alienating the children from him. When explaining its intended dispositional order, the court, while noting Father’s deficiencies, attempted to encourage his future involvement with the children. The court softened its criticism of Father’s lack of recent contacts with the children, i.e., “I’m not faulting you . . . but you probably pulled away because you had other things to do.” The court speculated that his children, like others the court had encountered, responded to his disinterest by withdrawing, i.e., “[C]hildren instead of being hurt further they’ll say, ‘Oh well, I don’t want to see him,’ ” and surmised that his children needed his involvement, i.e., “[T]here’s not a doubt in my mind that they don’t need you.” None of these comments by the court, designed to promote an eventual reunification, constituted a “finding.” Nor did the court make a finding when, in the same statement, it said, “I frankly don’t doubt that there’s some alienation going on here.” And, as we have already noted, our review of the record reveals no substantial evidence of alienating conduct by Brenda S.

Lastly, Father contends the placement was an abuse of discretion because there was insufficient evidence that Brenda was able to provide suitable housing for the children. Father bases the contention on two state regulations for placement of foster children that require each foster child shall have a separate bed (Cal. Code of Regs., tit. 22, § 89387, subd. (a)(5)); and that except for infants, foster children shall not share a bedroom with an adult (Cal. Code of Regs., tit. 22, § 89387, subd. (a)(8)).

After the matter was submitted at the dispositional hearing and the court announced its intention to follow the CFS recommendations, the minors' counsel informed the court that the children were living with Brenda S. at her parents' home, and that Carolyn had been sharing a bed with Brenda S. The court ordered Carolyn be provided a separate bed. None of the parties to the proceeding asserted any need for Carolyn to be provided a separate bedroom and, hence, that matter was never presented for the court's consideration. By failing to raise this issue concerning suitable housing below, Father is precluded from raising it on appeal. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) The juvenile court cannot be shown to have abused its discretion in making its placement determination based on its failure to consider a fact or issue that was never brought to its attention.

Father has not established the court's placement determination was an abuse of discretion.

II. *The Court's Visitation Order Was Lawful*

Father contends the court's visitation order unlawfully delegated to the children absolute discretion to determine whether to refuse visits with him. The visitation order stated: "Order that [CFS] arrange visitation. Visitation with father will be for a minimum of one hour two times per month and may be supervised. Visitation with mother will occur after she has presented herself to [CFS] and is assessed and approved. Order that the child not be compelled to visit against his/her will, per *In re Danielle W.* [(1989) 207 Cal.App.3d 1227] and per *In re Chantal S.* [(1996) 13 Cal.4th 196]. Authority for extended overnights."

Neither *In re Danielle W.* nor *In re Chantal S.* allow a child absolute discretion to unilaterally refuse visitation by a parent. In *In re Danielle W.*, the court approved a visitation order which vested limited discretion in the county welfare agency to consider the children's desires regarding visits with their mother. (207 Cal.App.3d at p. 1233.) In *In re Chantal S.*, our Supreme Court upheld a court order that required a father's visits be facilitated by the child's therapist. The Supreme Court found that the order mandated that the therapist cooperate with the court's visitation order and did not give the therapist absolute discretion to determine whether visitation should occur. (13 Cal.4th at p. 213.)

Father contends the visitation order in this case effectively has given the children absolute discretion to decide whether Father can visit them, thereby unlawfully delegating to the children judicial authority over visitation. CFS argues Father has waived his right to contest the visitation order on appeal by failing to contest it in the juvenile court, and argues the contention also fails on the merits. Father asserts that he preserved his right to challenge the visitation order because it was "one of the recommendations in the dispositional report, and [Father] had objected to the recommendations." CFS's position is correct in both respects.

With regard to the waiver issue, Father's only cited objections occurred at a December 15, 2003 hearing, when his counsel agreed with the court's understanding that the disposition recommendations needed to be set for a contested hearing, and at the commencement of the December 19 contested hearing itself, when his counsel informed the court that "we are not in agreement with the report." As the hearing proceeded, the main focus of the contest concerned whether the children would be better off if placed with Father or Brenda S., not on the scope of the visitation order. Near the end of the proceedings, when the court discussed the visitation aspect of its dispositional order, neither Father nor his counsel objected to the terms of the visitation order or claimed that it gave the children absolute discretion to refuse visitation.

If Father believed the visitation order was unclear or delegated too much discretion to the children to refuse visitation, he needed to raise the issue at the dispositional hearing so that the court would have had an opportunity to clarify or modify

its order. Father's nonspecific statement that he disagreed "with the report," made at the commencement of the wide-ranging dispositional hearing, is insufficient to have given the court reasonable notice of any potential problems with the separate aspects of the report; furthermore, it did not relieve counsel of the need to identify the particular aspects of the disposition considered objectionable as the contested hearing moved forward. (See *In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-642.) We conclude that Father failed to preserve for appeal any challenge to the juvenile court's visitation order.

Notwithstanding Father's waiver of this issue, the contention also fails on the merits. Under the pertinent legal principles, a juvenile court is permitted to delegate to a third person, such as a county social worker or therapist, the responsibility to manage the details of visitation such as the time, place and manner thereof, but may not delegate absolute discretion to determine whether any visitation occurs. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 213; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476-1478; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.) Likewise, visitation may not be dictated solely by the minor, although the minor's desires regarding visitation may be a dominant factor in administering visitation. (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-51; *In re Danielle W.*, *supra*, 207 Cal.App.3d at pp. 1237-1238.)

Here, the visitation order expressly conditioned that the children not be compelled to visit against their will "per *In re Danielle W.* and per *In re Chantal S.*" Applying the presumption of correctness, we interpret the visitation order as requiring that the children's wishes be *considered* in determining whether visitation will occur, but only to the extent *permitted* by *In re Danielle W.* and *In re Chantal S.*

Father's assertion of delegation to the children of absolute discretion over visitation is speculation.⁶ Nothing in the record establishes that the minors were given complete and total discretion over the details of their visitation. To the contrary, the

⁶ We note Father mistakenly attributes to the court comments that were actually made by the counsel for the children, Barbara Hinton, to the effect the children were opposed to visiting Father, but would be encouraged to do so.

court repeatedly made clear its intention to give Father “every opportunity for visitation.” The court authorized and encouraged extended overnight visits, and indicated the court “would like the visits increased if they are going well.” In addition, the court retained jurisdiction over the case and ordered a three-month review, expressing its intention to monitor the various aspects of the reunification plan including Father’s progress in “visiting every single possible time [he could], and [his] asking for more.” On the record before us, no error has been demonstrated.

III. *Denying Transfer of the Case to Solano County Was Not an Abuse of Discretion*

Father contends the juvenile court abused its discretion in denying the request by CFS to transfer the case to Solano County. CFS recommended transfer because the children were residing with Brenda S. in Napa County and Father was residing in Solano County. CFS believed Father and the children would receive better services in Solano County because it would have “more access to the father.” Minors’ counsel opposed the transfer to Solano County, asserting the children’s interests would be best served by providing them with continuity in their representation and in the handling of the case. Minors’ counsel thought moving the case to Solano County would not help the children since they did not reside in Solano County. Father’s counsel expressed no position on the transfer request. The court denied the transfer, indicating the court had become familiar with the children, “now love[d] them also” and wanted to closely monitor the progress of the case itself.

Father contends the decision to deny transfer was an abuse of discretion because it was based on an incorrect finding that the children were residents of Contra Costa County. He further contends the court did not weigh the relevant factors when considering the best interests of the children, including that Solano County was very familiar with this family, Contra Costa County had no history with the family, the children were represented by the same vigorous advocate for five years in Solano County but had only been represented by minors’ counsel, Hinton, for three months, and Solano County was better equipped to provide services to Father and the children.

Since the children were residing at Nicole's mother's home in Contra Costa County when they were detained, venue to commence proceedings was proper in Contra Costa County. (§ 327; Cal. Rules of Court, rule 1403(a).) Thereafter, the juvenile court had discretion to transfer the case to the county of Father's residence or of the children's foster residence, if the court determined that the transfer would further the best interests of the children. (§ 375; rule 1425(d); *In re Christopher T.* (1998) 60 Cal.App.4th 1282, 1291.)

Contrary to Father's assertion, the factors cited by the juvenile court in denying transfer of the case to Solano County are sufficient to support its exercise of discretion to retain the case in Contra Costa County. By the time of the transfer request, the court in Contra Costa County was more familiar with the pertinent facts and issues in the case than the Solano County court. The juvenile court acted properly in assessing that maintaining continuity in the follow-up monitoring of the reunification plan would serve the best interests of the children. The children were being represented by diligent counsel in the Contra Costa County proceedings, and there is no basis to conclude they would be prejudiced from continued representation by that attorney. Since the children were residing with Brenda S. in Napa County, they would have had to travel regardless of whether the case remained in Contra Costa County or was transferred to Solano County. Although Father's interests are not determinative, we note that the CFS social worker had been providing Father with referrals to programs and services located in Solano County, thereby eliminating potential prejudice to Father from retaining the case in Contra Costa County. Based on the entire record before us, we conclude the court's decision was reasonable and no abuse of discretion has been demonstrated.

IV. No Ineffective Assistance of Counsel Shown

Finally, Father recasts three of his previous arguments as the bases for claiming ineffective assistance of counsel. Specifically, he contends his trial counsel provided ineffective assistance of counsel by failing to present the juvenile court with the court records from the prior Solano County dependency proceedings to corroborate his testimony and to help establish aspects of the earlier proceedings unfavorable to Brenda

S. He also claims trial counsel was ineffective by failing to object to the visitation order and by failing to argue in favor of the transfer of the case to Solano County. We reject the claims based on Father's failure to establish resultant prejudice.

To prevail on a claim of ineffective assistance, defendant "must establish not only deficient performance, i.e., representation below an objective standard of reasonableness, but also resultant prejudice. [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 333.) "[P]rejudice must be affirmatively proved; the record must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (*Ibid.*, quoting *Strickland v. Washington* (1984) 466 U.S. 668, 694; *People v. Ledesma* (1987) 43 Cal.3d 171, 217-218.) "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." (*Strickland*, at p. 697.)

We have already determined that the juvenile court was made aware of Brenda S.'s psychological disorder and that she had been precluded from making medical decisions on behalf of the children; the juvenile court tailored its placement order to take these circumstances into account. The juvenile court was also made aware that this appellate court had overturned the Solano County exit order prohibiting Brenda S. from "caring for" Eddie S. In earlier portions of this opinion, we uphold on the merits the juvenile court's visitation order and the decision to deny transfer of the case to Solano County. In light of these determinations, we conclude Father has not shown he would suffer prejudice from the asserted omissions by trial counsel.

DISPOSITION

The dispositional order is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

GEMELLO, J.